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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,921	02/05/2004	Simon Mawson	2000U042D1.US-CON1	5236

7590 07/02/2004  
Kevin M. Faulkner  
Univation Technologies, LLC  
Suite 1950  
5555 San Felipe  
Houston, TX 77056

EXAMINER
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CHEUNG, WILLIAM K

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/772,921	MAWSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William K Cheung	1713	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>0205</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of

U.S. Patent No. 6,608,149. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-10 of U.S. Patent No. 6,608,149 and claims 1-21 of instant application are related to each other as the genus and its species.

### ***Allowances***

3. Claims 1-21 would be allowable if the obviousness-type double patenting of claims 1-21 is overcome.

4. The following is an examiner's statement of reasons for allowance:

As of the date of this office action, the examiner has not located or identified any reference that can be used singularly or in combination with another reference including the closest prior art of Brady, III et al. (US 5,317,036) to render the present invention anticipated or obvious to one of ordinary skill in the art.

*The invention of claims 1-21 relates to a **process to produce a multimodal polyolefin in a single reactor** comprising:*

*a) **continuously combining a catalyst component slurry with a catalyst component solution** to form a catalyst composition;*

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*b) **combining the catalyst composition** with one or more olefin(s) in a polymerization reactor to form a multimodal polyolefin;*

*c) **measuring a sample of the multimodal polyolefin** to obtain an initial multimodal polyolefin property;*

*d) **changing the amount of catalyst component** solution combined in (a) relative to the amount of catalyst component slurry to obtain a second product property; and*

*e) **isolating the multimodal polyolefin** product;*  
*wherein the **catalyst component slurry** comprises one or more catalyst compounds, **one or more activators** and **one or more support materials**; and the catalyst component solution comprises **one or more catalyst compounds**, wherein the **catalyst compounds** may be the same or different.*

The closest prior art Brady, III et al. (Figure 1, components 50, 60, 45, 43, 62, 46; col. 8, line 32-50) disclose a process of using a reactor with installed components that can be used to continuously mix catalyst components that are in liquid form. Although Brady et al. (col. 13, line 14-17) disclose that typical organometallic co-catalyst other than the aluminoxanes are suitable in liquid form, Brady et al. (col. 29, line 19-23) clearly indicate that aluminoxanes are to be used in a solution form. Therefore, Brady et al. clearly teach away from the invention of claims 1-11 which relates to a process of continuously combining a catalyst component slurry with a catalyst component solution to form a catalyst composition for the claimed polymerization process. Further, regarding the

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polymerization process, Brady et al. is silent on measuring a sample of the polymer product to obtain an initial product property and changing a process parameter to obtain a second product property. In view of the reasons set forth above, it would not be apparent to one of ordinary skill in art to use the process teachings in Brady et al. to obtain applicants' invention of claims 1-21.

### **Conclusion**

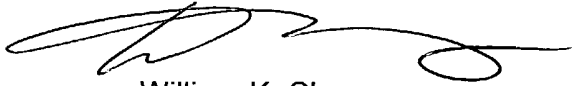
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair->

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direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'William K. Cheung', with a stylized, flowing script.

William K. Cheung

Primary Patent Examiner

June 29, 2004